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File No. C. Legis. Sel. & All./47

Legal **DEPARTMENT**

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Subject:— Legislature Salaries and Allowances.

Opinions under the Bombay Legislature Salaries and Allowances Act, 1937 (Bombay Act III of 1937)

File No. O. Legis. Sel. & All. 47

Std. Sectt. Slip 24 B a.

S 17-A

CONTENTS.

Legal Department File No. O.Legis.sal. & All./47.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Legislature Salaries and Allowances Act, 1937.	
1.	O.No. 11651 5/12/1947/	Section 3. Interpretation of the words "carries on business" in proviso to section 3. 1-4	

MR
1415

K.S.R.
1415.

V.VK.7/6/56/
SC.

Office of the R.L.A.

The question referred to the R.L.A. is not quite free from doubt. The proviso to section 3 of the Bombay Legislature Members Salaries and Allowances Act, 1937, reads as follows:

> " Provided that nothing in this section shall entitle a member to daily and travelling allowances, if such member ordinarily resides or carries on business at the place where the session of the Chamber or the metting of the Committee is held."

The words "carries on business" are used in several enactments, particularly in statutes relating to the jurisdiction of courts and to the commencement of actions in courts. The authorities under such enactments afford no direct assistance since the purpose of the enactments is quite different . The underlying intention of the enactment under construction is that a man is usually to be found at the place where he carries on business and , on that assumption, he needs not be paid any daily or travelling allowance. It is true that business carried on through agents would be covered by the strict letter of the law but the question here is quite different. Mr . Shinde maintains that he permanently resides at Chiplun where he has got a house and landed property and also business and that he further has a business in Bombay which is looked after by his managers and to which he rarely attends by going to Bombay. In other words, Mr. Shinde contends that his principal place of business (and also of residence) is Chiplun and that the fact that he has a business in Bombay which is looked after by his agents is no proof of his being found in Bombay. In the case of Shiels vs. The Great Nothern Railway Company (30 L.J. Q.B. 331)

V.VK.
7/4/1938.

4C.

it was said of a company that they carry on their o business at the place of general management and not at any other, though it may have a District Superintendent . The same principle was affirmed in re. Brown vs. London and North Western Railway Co. (Engl Reports-122,K.B. p. 4 where it was said that generally speaking a man carries on his entire business where the general superintendence of it is. In Cain vs. Butler (1916, 1 K.B. 759,page 762) , the following remarks were made:

> " If the mere fact of a man being director of a company and attending theboard meetings at the registered office of the company amounted to a carrying on by him of his business there , one who was a director of a number of differenet ~~xxxx~~ compan having their head office each in a different town would carry on business in all those towns and might at the option of the plaintiff be sued in any one of them. That cannot have been in ended. I think that what the County Courts Act meant was that a man who is carrying on a business of his own is usually to be found at the place where it is carried on ."

The use of thewords "his business" does not make much difference to the argument. Upon theauthority of these cases it is stated as a general proposition at p. 190 , Halsbury's Laws of England, Vol. 5 , Second Hailsham) Edition , that a person who carries on business within the district of a court by means of an agent does not reside or carry on business within that district if he himself carries on business in a different place. I would, therefore, be inclinded to say on the particular facts of this case that Mr. Shinde cannot be said within the intention of the Act to the carry ng on business at Bombay.

O.C. Id/- P.M.L.
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Remembrancer of Legal Affairs

U.R. to F. D. No. 11651, dated the 5th December 1947.

V.VK. 7/5/1956/

4C.